

Delaware Professional Licensing Review Committee
May 25, 2016
9:30 a.m.
Senate Hearing Room, 2nd Floor, Legislative Hall, Dover, DE

MEETING MINUTES

Approved June 16, 2016

Committee Members Present: Secretary Jeffrey Bullock, Chair; Representative Gerald Brady; Judy Diogo, Secretary Patrice Gilliam-Johnson; Deanna Killen, on behalf of Senator Gerald Hocker; Debbie Gottschalk, on behalf of Secretary Rita Landgraf; Charles Madden; Nello Paoli, Jr.; Senator Karen Peterson; Joshua Schoenberg; Ryan Tack-Hooper; Alan Grinstead, on behalf of Commissioner Robert Coupe

Staff Present: David Mangler, Shauna Slaughter, Patricia Davis, Meaghan Jerman

Public Present: Jennifer August, Verity Watson, Joint Sunset Committee

Call to Order

Secretary Bullock called the first meeting of the Delaware Professional Licensing Review Committee to order at 9:05 a.m.

Introduction of Members

The Committee members introduced themselves. Secretary Bullock thanked all present for attending and for their willingness to serve on the Committee.

Review of Elements of Executive Order 60

Secretary Bullock explained the intent of Executive Order 60 is to identify any barriers or unnecessary burdens to licensure within certain occupations often faced by Delaware citizens. The charge of the Committee, he explained, is to explore the barriers and challenges faced and make suggestions as to how the safety of our citizens can be maintained, while also providing greater opportunities for individuals to have the career of their choice. The Committee will submit a report on their analysis to the Governor by October 14, 2016.

Senator Karen Peterson provided a historical overview of how professional licensure has evolved since she was first elected to the Senate in 2002. At that time there was a bar to professional licensure for anyone with a felony conviction. Senator Peterson was instrumental in passing legislation that allowed

each professional and occupational board to determine which crimes were substantially related to the profession or occupation. She was also instrumental with legislation that allowed an individual to appeal to the board for a waiver for licensure after five years had passed following a felony conviction. She emphasized that we have come a long way, but improvements can be made.

Mr. David Mangler, the Director of the Division of Professional Regulation (DPR), provided an overview of the Division. He explained Delaware is an umbrella agency for professional licensing, where many professions are centralized in one Division. The mission of DPR to ensure the public's health, safety, and economic well-being mirrors the primary object of the boards and commissions. The Division provides licensure processing, board administrative oversight, and investigative services to 35 professional boards, and 54 professions, trades, and events. The Governor appoints all board members. He explained the Division currently has over 300 board members and 80,000 licensees. The Division is self-funded and does not receive any general funds.

Ms. Patricia Davis, Deputy Attorney General for DPR, informed the Committee that each board has an assigned Deputy Attorney General (DAG) who attends all meetings and subcommittee meetings. The DAG's role is to protect the process by ensuring that all of the board's decisions are made within the statute governing the respective occupation or profession and are legally defensible. Mr. Mangler explained that Title 24 of the Delaware Code lists all the boards and commissions regulated by the Division, noting that there are other Title 24 professions regulated within the state that do not fall under the DPR umbrella, such as certified nursing assistants, teachers, and lawyers, etc. Mr. Madden inquired how the Governor determines the qualifications of appointed board members. Mr. Mangler explained the board composition is defined within the respective statute. In most instances just over fifty percent of the members are licensed individuals with the remaining are public members. The public members cannot have any relationship to the profession. Mr. Madden noted that it would seem likely the professional members would have unintended influence on the lay members of the board as the professional members are the "experts". Mr. Mangler shared the Division's experience, with the Board of Medical Licensure and Discipline as an example, being that public members are most often very engaged, seek explanations from and challenge the professional members to explain technical terms and items in a manner that is understood by a non-professional, i.e., the general public. He further noted that in one of the white papers distributed to each of the Committee members speaks to the balance of public-to-professional member ratio and "undue influence." In that paper the concept of balancing a board's composition more heavily on the side of public membership, while appearing to address undue influence of the professional representatives, can actually not have the desired effect when the few professional members are successful in exerting overbearing force during discussions and decision-making, or where the public members continually defer to the professional members. Secretary Bullock also described the current every day challenges faced by the Governor's Office in finding civically minded public members who are willing to serve on a board and recognized the hard

work of the Governor's office in this undertaking. The Committee acknowledged that this is a difficult task, and not the responsibility of the Committee, but something that should also be considered in their work on Executive Order 60.

Recommendations Report – Goals and Timeline

Mr. Mangler shared what he identified to be some of the goals of Executive Order 60. He suggested that perhaps one goal to be aimed at reducing the burden(s) in acquiring a waiver for a criminal conviction – a current hurdle that many cannot overcome without waiting significant periods of time. Mr. Mangler informed the Committee that there is currently a draft bill that may be introduced that reduces the 5-year waiting period for felony convictions for certain occupations. In conjunction with this, the Boards, through their respective DAG's guidance, are in the process of reviewing the list of crimes considered "substantially related" to their profession in the hopes to eliminate any extraneous crimes that are perhaps only loosely related. Amending these lists of crimes is done through the Rules and Regulations change process and does not require legislative changes. Secretary Bullock asked that the work continue to move forward with the results and status of each boards' reviews of these lists be included in the final report.

The Committee discussed the challenges faced by individuals who have been incarcerated and are re-entering the workforce. Mr. Mangler shared that he previously met with education and training staff at the Department of Corrections (DOC) about training programs offered through DOC related to DPR's professions. HVAC-R, Plumbing, Electrical, and Cosmetology/Barbering were identified as related professions. Ideally, Mr. Mangler explained that an end result could include the lowered waiver barriers for individuals released from prison who have received the training required to enter the workforce.

The Committee discussed the process by which a board determines what crimes are considered substantially related to the profession. Mr. Tack-Hooper inquired if there were evidence based methods relied upon by the Board members in determining which crimes are considered substantially related to the profession. Ms. Davis explained there is no evidence based data available to boards for contemplation, and she provided the example of how the Board of Medical Licensure and Discipline may consider crimes of dishonesty related to the practice. Mr. Tack-Hooper suggested one goal of the Committee could be to establish data collection procedures so moving forward boards could move towards making evidence based decisions. Secretary Bullock cautioned the Committee on the use of evidence based data as it can be interpreted different ways and has the potential for an unintended negative impact on individuals. Mr. Mangler explained that crimes related to the healthcare professions are much easier to define than professions such as plumbing. Crimes substantially related to plumbing are more commonly theft related crimes. Mr. Mangler went on to describe the waiver process, during which an applicant can appeal a board's decision to propose to deny a license, request

a hearing, and potentially be granted a license, despite previous convictions. Mr. Mangler explained the only times waivers have not been granted have been instances where they have not been able to meet one of the three requirements for a waiver. The three requirements currently being: 1) the appropriate time had passed since the conviction, 2) the applicant is in substantial compliance with requirements set forth by the court, and 3) the granting of the waiver will not endanger the health, safety, and welfare of the public. Mr. Mangler explained this process is often expedited by gathering this information in advance of the meeting for the board's review and consideration. The board can grant the waiver based on the supplied documentation, and only if there is concern, they may deny the application and the applicant is then provided with the right to a hearing before the board.

Mr. Mangler offered, as another goal of the Committee, that the Committee consider development of best practice criteria to be used when an existing board is seeking to expand its authority or increase the requirements of applicants, and criteria to apply when considering whether an unlicensed group of individuals that is seeking to be recognized through licensure.

As part of the Executive Order 60 direction, a review of some of the existing statutory language to identify where the possibility exists that excludes otherwise qualified individuals from working in Delaware because Delaware regulates a profession not regulated in surrounding states. Mr. Mangler explained another obstacle often encountered by applicants is a discrepancy among the number of educational hours required for a license based on the state where the applicant is applying. Cosmetology educational hours may vary from state to state making it very challenging for an individual to seek licensure by reciprocity. Mr. Mangler also suggested the Committee consider evaluating requirements to maintain a license to determine if a board is imposing burdensome continuing education or practice hour requirements on a licensee.

Senator Peterson recognized other "artificial barriers to employment" through some research that was done in the past and offered to share the results related to this topic. She recalled the lack of women or African Americans working as paramedics in the 1980's as a result of the inability for either to be members of a Volunteer Fire Department, which at the time was an unspoken requirement to become a paramedic. The Committee discussed an additional barrier to the occupation of an individual's choice as related to some educational requirements. It was further noted, as another example of additional barriers outside of licensure, the fact that some health care educational programs require clinical hours completed at outside organizations. At times there may be students who are either not accepted into an educational program due to past criminal offenses because of down-stream difficulty in getting them placed for clinical experiences, or if admitted, find that organizations that provide these clinical experiences will not accept them from the school(s) – even though it may ultimately be possible for them to become licensed. The Committee agreed that there are barriers that can exist long before applying for licensure and that they definitely felt it important to consider including a

discussion of this topic in the final report.

The Committee further discussed a board's waiver process. Mr. Grinstead suggested that many applicants, especially those recently released from incarceration, may never apply or request a waiver for licensure as this process can be very intimidating. Mr. Grinstead advised the Committee that DOC did not have a specific program in place to help those incarcerated prepare for obtaining a professional license. Ms. Diogo suggested the Committee consider a recommendation included in the report be that a program be put into place in correctional facilities to aid those anticipating release with the licensure application process. Ms. Gottshalk suggested DPR be added to the I-Adapt team, which is an individualized re-entry program for Delaware inmates.

Introduction of White Papers

The Committee members were provided with copies of the Citizen's Advocacy Center's white paper entitled "Addressing the Supreme Court's North Carolina Dental Decision: Options for the States", as well as the Council on Licensure Enforcement and Regulations (CLEAR) white paper entitled "Developing Regulations". There was no additional discussion on these documents at this time.

Public Comment

Ms. Jennifer August, a Board Certified Clinical Art Therapist, addressed the Committee. Ms. August spoke regarding her experience in seeking licensure as an art therapist in Delaware. Secretary Bullock explained that it is the Legislature's responsibility to decide what professions require licensure and did not feel it was the intent of this Committee to determine if art therapists should be licensed. The Committee thanked Ms. August for her feedback and attendance at the meeting.

Next Steps – Future Meeting Dates

Mr. Mangler asked the Committee if the thought of varying future meeting locations throughout the State is something it would find valuable. An affirmative response was received from those present. Ms. Jerman will correspond with Committee members to obtain a date and preferred location for the next meeting and future meetings.

Adjournment

With no further discussion, the Committee adjourned at 11:05 a.m.